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County of Los Angeles CHIEF EXECUTIVE OFFICE

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WILLIAM T FUJIOKA
Chief Executive Officer

Board of Supervisors
GLORIA MOLINA
First District

MARK RIDLEY-THOMAS
Second District

ZEV YAROSLAVSKY
Third District

DON KNABE
Fourth District

MICHAEL D. ANTONOVICH
Fifth District

February 1, 2013

To: Supervisor Mark Ridley-Thomas, Chairman
Supervisor Gloria Molina
Supervisor Zev Yaroslavsky
Supervisor Don Knabe
Supervisor Michael D. Antonovich

From: William T Fujioka
Chief Executive Officer

USE OF PROPOSITION 172 (ITEM NO. 2, AGENDA OF JANUARY 29, 2013)

On January 29, 2013, the Board instructed the Chief Executive Officer (CEO) to report back in one week on whether or not Proposition 172 revenues can be re-allocated from the County budget to a Community Services District, or would a State legislative change be required before the Board could allocate these funds for public safety services to a Community Services District.

The CEO and County Counsel concur that no new legislation on Proposition 172 would be required. These funds can be distributed within the County for its eligible public safety services. A Community Services District formed to provide law enforcement services could also be an eligible local agency recipient of County Proposition 172 funds.

Proposition 172 Background

"Proposition 172" refers to a half cent statewide sales tax approved in 1993 by a constitutional amendment with revenue to eligible counties and cities restricted for "public safety services" defined as including "sheriffs, police, fire protection, county district attorneys, county corrections, and ocean lifeguards" (and specifically excluding courts). Proposition 172 funds are distributed from the state Local Public Safety Fund to county Public Safety Augmentation Funds. See California Constitution Article XIII, § 35; Gov't Code § 30051 *et seq.*

"To Enrich Lives Through Effective And Caring Service"

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Proposition 172's constitutional provisions and the implementing statutes do not limit the discretion of the County Board of Supervisors (Board) to distribute these funds to another local agency, such as a special district, provided that recipient has the authority to provide public safety services. There is also no limitation in these provisions on the Board's discretion to allocate these funds for permissible purposes among the county departments. These options must be implemented in the overall context of the Board's express statutory authority to supervise County officers and determine the Sheriff's budget and the limitation that the Sheriff independently performs law enforcement functions, including an investigative function, an issue which will be discussed further in the report to follow. See e.g. Gov't Code § 25303.

State Attorney General Opinions

The State's Attorney General has written two opinions which support these conclusions. In 2003, the Attorney General determined that a county board has the discretion each fiscal year to change the allocation of its Proposition 172 funds among otherwise eligible public services agencies, even to an eligible local agency which had not received these funds before. The opinion notes that there is a maintenance of effort requirement because a county must continue to match its non-Proposition 172 base funding, but that the counties have discretion to allocate the supplemental Proposition 172 funds among eligible recipients for public safety services, and to change those allotments. 86 Ops.Cal.Atty.Gen 38 (2003). This would appear to include permitting allocations amongst County departments performing the County's eligible public safety functions.

The following year, the Attorney General further concluded that a county could transfer Proposition 172 funds to an independent fire district because it is an eligible "local agency", and a county may allocate these funds to any eligible local agency. 87 Ops.Cal.Atty.Gen 1 (2004).

If you have any questions, please feel free to contact me, or your staff may contact Rita Robinson at (213) 893-2477, or via e-mail at rrobinson@ceo.lacounty.gov.

WTF:RLR:DSP
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c: Sheriff
Executive Office, Board of Supervisors
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March 13, 2013

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Agenda No. 2
01/29/13

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
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**Re: Report Relating to Sheriff Patrol Services in the
Unincorporated Area**

Dear Supervisors:

This report responds to your Board's January 29, 2013 request that this office work with the Chief Executive Officer ("CEO") and Auditor-Controller ("Auditor") and report back on Board options relating to Sheriff patrol services in the County Unincorporated Area ("UA").

The California Constitution and statutes confer distinct areas of responsibility for law enforcement upon the Sheriff, and fiscal responsibility upon your Board.

Sheriff's Law Enforcement Authority

The California Constitution provides that the Legislature shall provide for an elected sheriff in each county. State law confers upon a sheriff the primary responsibility for investigating public offenses and for arresting and taking before a magistrate all persons who have committed an offense. The sheriff is also responsible for the policies, procedures, and administration of the county jail.

The sheriff's jurisdiction extends throughout the county, including the territory within its incorporated cities. The authority and duty to provide law enforcement services in the incorporated cities is concurrently held by the cities and the sheriff, with the cities being the primary provider and the sheriff being the secondary responder. Cities also may provide for law enforcement services through contract with another local agency.

A sheriff is functionally independent from the control of county boards of supervisors in performing these law enforcement functions. The courts have

indicated that a board of supervisors cannot use its budgetary power to control the operation of the sheriff's office or county jail operations.

Board of Supervisors' Authority

1. Budget

The Board alone has authority over the County budget. In establishing the budget, your Board has the authority to create distinct budget units among departments, including within the Sheriff's Department. In addition, your Board is required to budget by classifying expenditures by object level. Object levels include: (a) salaries and benefits; (b) services and supplies; (c) other charges; and (d) fixed assets. Once individual budget units are created, State law requires a majority vote of your Board to transfer previously appropriated funds between budget units. The State Constitution, as well as State statutes and the County Charter, also vest in the Board the power to prescribe the number, compensation, tenure, and appointment of all County employees.

The Sheriff currently has eight budget units, none of which separates out UA services from contract city services. The Sheriff budget units are: (1) Administration; (2) Clearing Account; (3) County Services; (4) Court Services; (5) Custody; (6) Detective Services; (7) General Support Services; and (8) Patrol (includes UA and contract city patrol).

Based on the budgeting powers of your Board described above, your Board could require the replacement of the current single patrol budget unit with new budget units, including a UA patrol services budget unit and a contract patrol services budget unit, to provide greater transparency and budget control over Sheriff patrol services.

Allocation of discretionary funding within the County is also within the Board's authority and discretion. For example, "Proposition 172" funds from the half-cent statewide sales tax to be dedicated to public safety services could be allocated, and reallocated, in the Board's discretion within the County or to other eligible local agencies in the County for these purposes.

Currently, the Patrol budget unit is funded from various sources, including net County cost and Proposition 172 funds. Your Board could allocate Proposition 172 funds at the budget unit level, and entirely fund a UA patrol services budget unit with Proposition 172 funds.

2. Oversight/Reporting

While a board of supervisors cannot direct the manner in which the sheriff performs his assigned law enforcement functions, a board of supervisors has a clear statutory duty to supervise the conduct of all county officers, including the sheriff.

A board's oversight authority does not extend to actions that would obstruct the investigative functions of the sheriff. This is in part due to the fact that the sheriff and district attorney in their investigative and prosecutorial capacities are considered State officers under the supervision of the Attorney General.

Notwithstanding that limitation, State law gives your Board the authority to determine whether an elected officer, such as the Sheriff, has faithfully performed his or her duties, even though your Board could not control, either directly or indirectly, the manner in which those duties are performed. As part of its oversight function, your Board can take steps to ensure that the Sheriff is following the financial controls set in the budget, by requiring him to make reports to your Board.

County Cost Recovery from Contract Cities

The "Gonsalves" law, named after its author, is a statute relating to county cost recovery for services to cities. First enacted in 1973, it only applied to Los Angeles County, but it was extended statewide in the early 1980s. Gonsalves requires that a county providing city services charge the city all those costs incurred in providing the services. Gonsalves also defines exclusions from permissible charges for services to a city. Gonsalves prohibits a county from charging as a direct or indirect overhead charge costs attributable to services made available to all portions of the county, but it leaves such determinations to the discretion of the board of supervisors. Gonsalves also prohibits county recovery of charges which are general overhead costs of government. A county's determination of overhead costs are subject to court review.

Binding Agreements Between the County and Sheriff

Your Board has inquired about the use of "agreements" between the Board of Supervisors and the Sheriff. Your Board could adopt a Memorandum of Understanding ("MOU") or Memorandum of Agreement ("MOA") or "agreement" by any other name with the Sheriff as a management tool, subject to the understanding that it would not be enforceable by a court as a "legally binding" contract between two parties with contracting authority.

Despite this limitation on enforcement in the courts, a written understanding, whether called an MOU, MOA, agreement, or policy can be useful. Internal agreements between departments have been used with positive effect.

Community Services Districts and Other Alternatives for Providing for Law Enforcement Services

1. Community Services Districts ("CSDs")

CSDs are legal entities separate from the county which may be formed to provide law enforcement services to district residents either by contract with the sheriff, or in other ways. CSDs have been suggested as one alternative for addressing UA funding of sheriff services, in part because a contract with a CSD could be similar to a city contract and could be enforced by the courts.

A CSD is an independent special district governed by an elected board separate from the board of supervisors. A CSD could be created through the Local Agency Formation Commission ("LAFCO") process, upon application either by a county resolution or a petition of at least 25 percent of the registered voters in the proposed district. A board of supervisors can only be the governing board if there are fewer than 100 registered voters at formation.

In the absence of sufficient revenue for a new district, LAFCO is expressly authorized to request an election on the new district conditioned on concurrent voter approval of a special tax or other revenue approved by eligible voters within the proposed district.

A CSD is permanent unless and until dissolved, merged or consolidated in another LAFCO process. A CSD has the power to independently raise revenues by multiple means including imposition of voter approved special taxes, assessments or fees, as well as the independent power to form zones without LAFCO or County input.

2. County Service Areas ("CSAs")

A CSA is a dependent special district governed by the board of supervisors which could be created by a LAFCO process similar to that for a CSD. Pursuant to State law, it is a district with affairs and finances under the supervision and control of the board of supervisors. Like a CSD, it can be created for law enforcement purposes, and LAFCO is required to determine sufficient funding at the time of formation unless the formation election is conditioned upon a special tax or other voter approved revenue. A CSA is initiated, like a CSD, by application to LAFCO based either on a petition or by resolution of the board of supervisors. A CSD or a CSA, if formed for police services, could be an eligible Proposition 172 funding recipient.

Although a CSA also has broad statutory powers to contract and to raise additional revenue from district residents, subject to elections when required by law, there also is a key difference in the litigation context. Unlike a CSD, a CSA does not have the power to sue or be sued. Disputes over CSA issues that reach litigation, therefore, involve the board of supervisors as a litigant on behalf of any

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CSA formed, while a CSD under current law could sue and be sued in its own name.

3. Municipal Advisory Councils

A Municipal Advisory Council ("MAC") is an advisory entity established and funded by a board of supervisors to advise the board on services to any unincorporated area, including on matters of public health and safety. Formation of a MAC does not involve LAFCO proceedings, but may involve an election and an elected board in the discretion of the board of supervisors. A MAC is advisory only and would not typically be granted authority to directly provide services.

Legislative Options for Special District

Your Board also could support special legislation to create a district specifically tailored for Los Angeles County to avoid some of the disadvantages of the CSD structure under current law.

Very truly yours,



JOHN F. KRATTLI
County Counsel

JFK:TJF:lm

c: Leroy D. Baca, Sheriff

William T Fujioka
Chief Executive Officer

Sachi A. Hamai, Executive Officer
Board of Supervisors